

**ANNUAL REPORT
OF THE
ENVIRONMENTAL QUALITY SERVICE
COUNCIL**



**Indiana Legislative Services Agency
200 W. Washington Street, Suite 301
Indianapolis, Indiana 46204**

October, 2009

INDIANA LEGISLATIVE COUNCIL

2009

Senator David Long

Chairman

Fort Wayne

Speaker B. Patrick Bauer

Vice-Chairman

South Bend

Senator Vi Simpson

Bloomington

Representative Brian Bosma

Indianapolis

Senator Brandt Hershman

Monticello

Representative Earl Harris

East Chicago

Senator Connie Lawson

Danville

Representative Dale Grubb

Covington

Senator Brent Steele

Bedford

Representative Scott Pelath

Michigan City

Senator James Merritt

Indianapolis

Representative Russell Stilwell

Boonville

Senator Connie Sipes

New Albany

Representative William Friend

Macy

Senator Timothy Lanane

Anderson

Representative Kathy Richardson

Noblesville

John M. Ross
Executive Director
Legislative Services Agency

ENVIRONMENTAL QUALITY SERVICE COUNCIL

Membership Roster

Representatives

Timothy Neese
Elkhart

David Wolkins
Winona Lake

Ryan Dvorak
South Bend

Matt Pierce
Bloomington

Senators

Beverly Gard, Chairperson
Greenfield

Frank Mrvan
Hammond

Edward Charbonneau
Valparaiso

Karen Tallian
Portage

Laymembers

Dwayne Burke
Indianapolis

Jon Moll
Muncie

Thomas Easterly
Indianapolis

Heather Hill
Greenfield

Art Umble
Indianapolis

Doug Meyer
Lafayette

Dave Wyeth
North Salem

Steve Murray
Lafayette

John Hardwick
Valparaiso

Calvin Davidson
Clayton

Staff

Robert Bond
Attorney for the Council

Bernadette Bartlett
Fiscal Analyst for the Council

A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.in.gov/legislative/>.

I. STATUTORY AND LEGISLATIVE COUNCIL DIRECTIVES

The Environmental Quality Service Council (EQSC) is established by IC 13-13-7.

The EQSC was directed in Legislative Council Resolution 09-01 to study the following topics:

- A. Conduct a study and develop recommendations concerning the advisability of establishing an institutional control registry and an environmental trust fund as set forth in SB 460-2009, or in a different manner (HEA 1162-2009)
- B. Conduct a study and develop recommendations concerning the feasibility of incorporating notice of restrictive covenants and environmental restrictive ordinances into the "One Call" system managed by the Indiana Underground Plant Protection Service under IC 8-1-26 (HEA 1162-2009)
- C. Role and responsibilities of sewer districts (SR 77-2009)

II. INTRODUCTION AND REASONS FOR STUDY

The activities of the EQSC in 2009 were conducted to discharge the EQSC's responsibilities under Legislative Council Resolution 09-01 and to study other environmental topics.

III. SUMMARY OF WORK PROGRAM

The EQSC met five times on the following dates at the following locations to consider the indicated topics.

September 2, 2009	Senate Chamber, Indiana State House	IDEM Assistant Commissioners' reports
September 22, 2009	Room 130, Indiana State House	Regional sewer districts
October 6, 2009	Room 431, Indiana State House	Institutional controls
October 20, 2009	Senate Chamber, Indiana State House	Petroleum and excess liability trust fund
October 26, 2009	Senate Chamber, Indiana State House	Water quality issues in Indiana lakes

IV. SUMMARY OF TESTIMONY

First Meeting - September 2, 2009

Indiana Department of Environmental Management (IDEM) Report - Dan Murray, Bruno Pigott, and Bruce Palin, Assistant Commissioners of IDEM, presented reports that addressed the following: (1) IDEM's mission; (2) IDEM performance metrics; (3) IDEM accomplishments; (4) changes at IDEM; (5) IDEM compliance and enforcement response policy; (6) rulemaking; (7) permits issued by IDEM; (8) a confined feeding report; (9) 2009 legislative changes affecting IDEM; and (10) revisions for consideration concerning the excess liability trust fund (ELTF).

Second Meeting - September 22, 2009

Regional Sewer District (RSD) Issues - Pat Robertson, interested citizen, spoke about RSD's, stating her view that RSD boards should be elected instead of appointed, noting that RSD's require sewer connections without documenting need, and giving examples of actions by RSD's, particularly the Twin Lakes RSD, that she considers abusive.

Bill Brown, interested citizen and Carroll County Commissioner, described his experience with two RSD's, and concluded from his comparison of the two that problems with RSD's are avoided if the board is elected instead of appointed.

Lisa Ellens and Claire Brockman, Valparaiso University Students, submitted a recommendation regarding septic to sewer transition. They: (1) noted the need to phase out septic systems because of the expense of maintenance and the environmental pollution they cause; (2) described current Indiana law concerning wastewater utilities; (3) described innovations in other states; (4) described plans for sewer improvements in Indianapolis; and (5) recommended the offering of monetary incentives to encourage the switch from septic systems to sewers.

Jamie Palmer, Chair of the Rural Wastewater Task Force, spoke about wastewater issues identified by the Task Force. She stated that improvements are required in all aspects of construction and operation of both septic systems and sewers, and that transition to sewers is not always a viable alternative.

Bruno Pigott, Assistant Commissioner, Office of Water Quality, IDEM, made a presentation on the interface between IDEM and RSD's. He: (1) discussed water quality issues; (2) described how RSD's are formed; (3) described IDEM assistance to local governments and residents; (4) described common complaints with RSD's; (5) offered IDEM observations and recommendations; (6) discussed improvement in water quality caused by RSD's; (7) discussed the operation of different RSD's in a single county; (8) described IDEM's storm water regulation responsibilities; and (9) discussed jurisdictional issues concerning IDEM and the Indiana State Department of Health (ISDOH) concerning septic field contamination.

Mike Mettler, Director, Environmental Public Health Division, ISDOH, discussed his agency's responsibilities with respect to wastewater. He discussed septic system failures and the assistance ISDOH provides to local health departments concerning wastewater issues.

Gary Chapple, director of Pollution Control, Fort Wayne-Allen County Department of Health, discussed the onsite waste management district in Allen County and the imposition of district fees, and provided information on the costs related to onsite systems.

Ken Smith, Assistant Director, Division of Water, Indiana Department of Natural Resources (IDNR), discussed RSD's and conservancy districts. He: (1) described the formation, management, and operation of conservancy districts; and (2) described the role of the Natural Resources Commission with respect to the districts.

Curt Gassert and Jennifer Richardson, Indiana Utility Regulatory Commission (IURC), discussed the IURC's regulation of water and wastewater utilities. They: (1) gave an IURC overview; (2) described the IURC's jurisdiction; (3) described the industries regulated; and (4) described the operation of the IURC as a quasi-judicial body.

Ted Stubbs, President of the Association of RSD's, discussed the operations of his association and of RSD's throughout the state. He: (1) described the difficulties in overcoming public perception concerning sewers as compared to other utilities; (2) described the diverse and unique nature of RSD's; (3) compared the powers and duties of RSD's to those of municipalities; (4) noted the level of direct representation on RSD boards that include a high percentage of RSD customers; (5) gave examples of RSD voluntary initiatives; (6) described the obstacles in convincing owners of properties with septic systems of the need for sewers; (7) noted typical problems with septic systems and the difficulty in testing them for environmental or public health threats; (8) discussed the findings of the Indiana Agriculture Regulatory Structure Task Force; and (9) described the benefits that result from the extension of sewers by RSD's.

Alan Hux, Counsel for the Association of Conservancy Districts, gave an overview of the role of the districts.

Karen Arland, Bond Counsel, Ice Miller, discussed the financing of sewer systems.

The Council received a letter from Tom Childers, interested citizen, who outlined his history of problems with a sewer connection in the Tri-Lakes RSD and suggested that the law should permit him to take his issues to small claims court.

Third Meeting - October 6, 2009

Institutional Controls (IC's) - John Kyle, Barnes & Thornburg, spoke concerning IC's, which include environmental restrictive covenants and environmental restrictive ordinances. He: (1) described how IC's are used to place restrictions on land use based on environmental issues; (2) described the proposed features of SB 460-2009; (3) described the need for both a recording system and an IC registry; and (4) conveyed an offer made by Professor Jim Barnes, School of Public and Environmental Affairs, Indiana University (SPEA) for SPEA and the Maurer School of Law, Indiana University, to conduct a national survey of IC's and to report the results to the

Council.

Peggy Dorsey, Deputy Assistant Commissioner, IDEM, spoke concerning IC's. She: (1) described IC types; (2) discussed remediation program responsibilities; (3) described IDEM's long term stewardship of IC's; (4) described the IC registry administered by IDEM; (5) noted IC challenges, failure, and concerns; (6) identified sites subject to IDEM remediation programs; (7) discussed issues that arise after closure of a site; and (8) discussed the proposal for an IC trust.

Kathy Lucas, Bose, McKinney & Evans, testified on behalf of the Environmental Restrictive Covenant Subcommittee of the Legislative Committee of the Environmental Section of the Indiana State Bar Association. She questioned the necessity of an IC registry and a trust fund to support the registry given the current recording system. She offered for consideration various questions concerning the details of administration of an IC registry and the costs of implementation.

Chuck Muller, Director of Public Awareness, Indiana 811 ("call before you dig" program of the Indiana Underground Plant Protection Service) described the organization and operation of the Indiana 811 system and future anticipated improvements.

The Council received a memorandum from Rhonda Cook, Director of Government Affairs, Indiana Association of Cities and Towns, outlining the Association's concerns about the requirement in HEA 1162-2009 for municipalities to submit to IDEM all ordinances pertaining to groundwater. She noted the intent of the legislation to give notice to IDEM of a change in a local ordinance that is a necessary element of an IDEM remediation program. The broad language of the statute results in the submission to IDEM of many ordinances, some with only limited application to groundwater. She suggested that the statutory language might be narrowed to better reflect the legislative intent.

Fourth Meeting - October 20, 2009

Petroleum and Excess Liability Trust Fund - Bruce Palin, Assistant Commissioner, Office of Land Quality, IDEM, discussed the petroleum program administered by his office. He: (1) described the funding of the ELTF; (2) described the historical use of the fund and the implementation of priority payment to protect the financial assurance function of the fund; (3) described the leaking tank review and claim process; (4) outlined suggested changes in the ELTF deductible, the definition of "owner", the cap on annual claim amounts, the administrative costs IDEM is allowed to recover, and the expanded use of the fund; and (5) provided an operator training update.

Christopher Braun, Plews Shadley Racher & Braun, spoke concerning ELTF issues on behalf of the Indiana Petroleum Marketers and Convenience Store Association (IPCA). He: (1) outlined the history of the ELTF; (2) provided the IPCA's response to changes in the ELTF program proposed by IDEM; (3) expressed the IPCA's concerns about ELTF solvency; and (4) stated the

IPCA's objections to the proposed ELTF and underground storage tank rules currently under consideration by the Underground Storage Tank Financial Assurance Board.

Angela Dorrell, Plews Shadley Racher & Braun, spoke on behalf of the Indiana State Bar Association's Environmental Section Legislative Committee on ELTF issues. She expressed concerns about the solvency of the ELTF and the possible negative effects of IDEM proposals for changes to the ELTF program.

Fifth Meeting - October 26, 2009

Lake Water Quality Issues - Lenore Tedesco, Ph.D., Department of Earth Sciences and Center for Earth and Environmental Science, Indiana University-Purdue University Indianapolis, made a presentation about blue-green algae in Indiana. She: (1) stated that algal blooms are common in Indiana lakes; (2) stated that algae produces toxins harmful to aquatic life, pets, and humans; (3) described the impacts and causes of algal blooms; (4) described nutrient loading as the primary cause of algal blooms; (5) discussed the status of harmful algal bloom guidelines and standards; (6) discussed Indiana monitoring and response to harmful algal blooms; (7) described 2007 federal Environmental Protection Agency assessments of microcystin and algal toxin; (8) discussed phosphorus enrichment and limitation in Indiana waters; and (9) indicated that there is insufficient data to determine whether phosphorus bans in other states reduce algae blooms.

Bruno Pigott, IDEM, made a presentation concerning the role of the state with respect to blue-green algae. He: (1) discussed public and private monitoring efforts; (2) discussed the availability of information to the public and precautions recommended to the public; (3) discussed water quality issues in the upper Fall Creek watershed; and (4) outlined future IDEM activities.

John Ulmer, Hoosier Heartland Resource Conservation and Development Council, spoke about pollution in local watersheds. He: (1) discussed the types of pollutants present in most streams in Indiana; (2) discussed the magnitude and causes of the pollution problem; (3) discussed the activities of local watershed groups; and (4) addressed contaminated sediment in Indiana lakes.

The Council received from Professor William Jones, School of Public and Environmental Affairs, Indiana University, a report concerning toxic algae and the results of algal toxin tests in Indiana.

V. COUNCIL RECOMMENDATIONS

The following recommendations were approved by vote by show of hands of a majority of the appointed members of the Council:

Environmental Restrictive Covenants (ERC's)

A. To reduce confusion for units of local government and IDEM, the definition in IC 13-11-2-71.2 of "environmental restrictive ordinance" enacted in P.L. 78-2009 (HEA 1162) should be modified to better identify which ordinance adoptions and amendments must be reported to IDEM by local units of government.

B. IDEM should continue its work on the ERC registry. No additional or external registry is needed at this time, but IDEM is open for reevaluation in the future.

C. The Council should continue to monitor issues surrounding the ERC registry, including the extent to which compliance inspections should be conducted, the appropriate level of funding, and whether entities subject to ERC's should be required to submit periodic reports to IDEM.

Regional Sewer Districts (RSD's)

A. IC 13-26 should be amended to provide clear authority to IDEM to take action to hold the appropriate person or entity (e.g., the county commissioners, the local health department, an individual, the county surveyor, or the local plan commission) accountable for septage in waters.

B. The Indiana Utility Regulatory Commission should be given jurisdiction in cases initiated by petition concerning RSD rates, RSD territories, and RSD requirements for properties to connect to the RSD sewer system.

Underground Storage Tanks (UST's) and the Excess Liability Trust Fund (ELTF)

A. The deductible under IC 13-23-8-3(2) for a petroleum UST that is not double walled and has piping that does not have secondary containment should be changed from \$25,000 to \$35,000.

B. In an action to determine liability for UST remediation, IDEM should be allowed the same standing as any other third party.

C. A mechanism should be provided to assist IDEM with remediating UST sites for which there is no responsible party, with the goal of reducing the environmental uncertainty and threat associated with those UST sites.

D. IDEM should be allowed to recover costs from UST owners and operators only for items that are properly documented (including those that are not ELTF eligible), with the proceeds to be used for the state cleanup program and not for general IDEM expenses.

E. IDEM, IDNR, and ISDOH should jointly develop a statewide strategy to deal with the problem of blue-green algae in lakes.

WITNESS LIST

Karen Arland, Ice Miller
Christopher Braun, Plews Shadley Racher & Braun
Bill Brown
Claire Brockman
Gary Chapple, Fort Wayne-Allen County Department of Health
Angela Dorrell, Plews Shadley Racher & Braun
Lisa Ellens
Curt Gassert, IURC
Alan Hux, Association of Conservancy Districts
John Kyle, Barnes & Thornburg
Kathy Lucas, Bose, McKinney & Evans
Mike Mettler, ISDOH
Chuck Muller, Indiana 811
Dan Murray, IDEM
Bruce Palin, IDEM
Jamie Palmer, Rural Wastewater Task Force
Bruno Pigott, IDEM
Jennifer Richardson, IURC
Pat Robertson
Ken Smith, IDNR
Ted Stubbs, Association of RSD's
Lenore Tedesco, Department of Earth Sciences and Center for Earth and Environmental Science,
Indiana University-Purdue University Indianapolis
John Ulmer, Hoosier Heartland Resource Conservation and Development Council